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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/647,916

Filing Date: August 26, 2003

Appellant(s): TIEMANN ET AL.

Jeffrey L. Clark
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/16/09 appealing from the Office action mailed 4/10/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 22-26, 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,579,486 to Damico.

Regarding claims 1, 28 and 29, Damico discloses a dowel (fig. 1) having a pressing plate (12) and a dowel sleeve (10) attached to the plate for taking up an expansion element (2), an expansion element head (12), the sleeve having an expansion zone, the plate having a single planar lower side (underneath 12) with cutting elements (8) extending from the outer circumference of the plate, the cutting elements curved along the circumference of the plate.

Regarding claim 2, Damico discloses the plate (12) as having a shaft (16), wherein the shaft (16) and sleeve (10) can be axially shifted against each other.

Regarding claim 4, Damico discloses the plate (12) as having an engagement device (6) in which the expansion element (2) can engage.

Regarding claims 5 and 26, Damico discloses the dowel sleeve (fig. 1) as having an anti twist device (22).

Regarding claims 22 and 23, Damico discloses the pressing plate as having a recess (18) for the engagement of a drive (20). Applicant should note that all components of figure 1 are attached in the final form of the Dowel.

Regarding claims 24 and 25, Damico discloses the pressing plate (12) as having an engagement device (14) which the expansion element (2) engages. Applicant should note that all components of figure 1 are attached in the final form of the Dowel.

(10) Response to Argument

The applicant argues the prior art, Damico, is not a dowel and is used in a manner different than that of the instant application. The applicant should note that the structure of Damico meets the structural limitations of the instant application as claimed. The applicant also argues the various components of Damico as not being similar to the components claimed in the instant application. The applicant should note that these components claimed, do not have enough structural limitations to differentiate from the prior art, Damico. The applicant states the examiner is using hindsight for matching components of the instant application to components of Damico. The applicant should note that the rejections are based on 35 USC 102(b) and do not modify the prior art reference. Also, as stated before, these components of Damico meet the structural limitations of the instant application as claimed. The applicant argues the structural limitations of the instant application are not met and, in particular, points out that the

"pressing plate" limitation of the instant application is not met by Damico because that component of Damico is "not intended to press anything at all". The applicant should note that the pressing limitation is functional and is only part of the name given by the applicant. the structural limitations given to this component are met by Damico. Also, the "pressing" is an intended function of the applicant. The applicant also argues in similar manner regarding the "dowel sleeve" which is met structurally, by the hole of Damico. Also, the applicant argues the "expansion element head" but it should be noted that this component is not positively claimed. Even so, this limitation has been addressed by the examiner and the structural limitations are met as noted in the above rejection.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Basil Katcheves/

Primary Examiner, Art Unit 3635

Conferees:

/B. E. G./

Primary Examiner, Art Unit 3633

/R. E. C./

Supervisory Patent Examiner, Art Unit 3635